IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.640 OF 2006

Bajaj Auto Ltd.
a company registered under the
Indian Companies Act, 1913,
having its Registered office
at Akurdi, Pune 411 035 .. Appellants.

Vs.

1. Pimpri Chinchwad Municipal
Corporation, Mumbai-Pune Road,
Pimpri, Pune 411 018 ..

2. Municipal Commissioner
Pimpri Chinchwad Municipal
Corporation, Mumbai-Pune Road,
Pimpri, Pune 411 018. ..

3. The Assistant Commissioner
(Octroi), Pimpri Chinchwad
Municipal Corporation,
Mumbai-Pune Road, Pimpri,
Pune 411 018. .. Respondents.

WITH

APPEAL FROM ORDER NO.641 OF 2006

Bajaj Auto Ltd.
a company registered under the
Indian Companies Act, 1913,
having its Registered office
at Akurdi, Pune 411 035 .. Appellants.

Vs.

1. Pimpri Chinchwad Municipal
Corporation, Mumbai-Pune Road,
Pimpri, Pune 411 018 ..

2. Municipal Commissioner
Pimpri Chinchwad Municipal
Corporation, Mumbai-Pune Road,
Pimpri, Pune 411 018. ..

3. The Assistant Commissioner
(Octroi), Pimpri Chinchwad
Municipal Corporation,

Mumbai-Pune Road, Pimpri,
Pune 411 018. .. Respondents.

Mr.A.K.Abhyankar, senior counsel a/w Mr.P.S.Dani, Mr.H.N.Vakil and Mr.D.D.Mehta i/b Mulla & Mulla & C.B.C.for the appellants.

Mr.N.V.Walavalkar, senior counsel a/w Mr.Deepak

More for respondent no.1.

CORAM : D.B.BHOSALE, J.

DATED : 13TH DECEMBER, 2006

JUDGMENT:

. These two appeals from order challenge the common order dated 9.8.2006 passed on the applications at Exhibit-5 in Special Civil Suit Nos.973 of 2002 and 643 of 2004 by which both the applications filed by the appellants-Bajaj Auto Ltd., are partly allowed. By the impugned order the respondents-Pimpri Chinchwad Municipal Corporation, hereinafter referred to as "the Corporation", have been temporarily restrained to close/stop the facility of current account no.3 of the appellants till the disposal of the suit on their depositing an amount of Rs.31.98 crores in Civil Suit No.973 of 2002 and Rs.2,56,43,923/- in Special Civil Suit No.643 of 2004 within one month from the date of the impugned order. The Corporation, by this order, is allowed to withdraw the amount, that would be deposited by the appellants.

2. The questions involved in these appeals are common. The facts and the prayers made in both the suits are similar. Both the learned senior counsel for the parties have agreed that these appeals need not be dealt with separately and can be disposed of by common order. In the circumstances I propose to make reference to the facts of the first appeal, that is, **Appeal from Order No.640 of 2006 in Suit No.973 of 2002.** The appellants in the said suit against the Corporation have made the following prayers:

> "a. It be declared that all the letters of the Defendants claiming arrears of octroi, dated 15-01-2004, 19-04-2004, 25-05-2004 and two respective Bills attached to the said letters, are ultra virus, illegal, ab-initio null and void.
>
> b. It be declared that the Defendants are not entitled to recover the alleged octroi rate difference under various Bills stated above, in prayer clause (a).
>
> **c. The Defendants, their servants, agents, and officers may be restrained by an order of injunction of this Hon'ble Court from**
>
> **i) enforcing or taking any steps or proceedings in furtherance or in pursuance of the said letters dated 15-01-2004, 19-04-2004, 25-05-2004 and two Bills enclosed therewith.**
>
> **ii) taking any coercive action against the Plaintiff for recovery under B.M.P.C. Act or any other Act/s.**
>
> **iii) proceeding to stop the Current Account facility of the Plaintiff with the 1st Defendant.**

d. The Defendant be directed to pay a sum of Rs.2,00,000/- as compensation/damages to the Plaintiff".

. By the applications for temporary injunction at Exhibit-5 the appellants prayed for ad-interim relief in terms of prayer clause (c) of the plaint.

3. The appellant/company carry on the business of manufacture of motorised two and three wheelers and some spare parts thereof. For importing goods within the limits of the Corporation they require to pay octroi to the Corporation for which they are granted current account facility under section 142 of the Maharashtra Municipalities Act, 1965 (hereinafter referred as "Act of 1965").

4. The appellants import goods within the limits of Corporation such as spares, components, casting and forging, paints etc. among other classifications. The case set up by the appellants is that they have separate spare parts division and separate records are maintained in respect thereof which are regularly inspected by the officers of the Corporation. All purchases of the spare parts division are classified by them as "spares" and they pay octroi duty for the

same under tariff Entry no.75A as applicable. The appellants import components as well. They maintain separate accounts for goods imported as "spares" and those imported as "components". The components are goods of various types such as speedometer, bearing, horns, carburetors, rider, seats, pillion-seats, head lamp assembly, tail lamp assembly, silencers, wiring harness control cables, switches, lock body, bearing cages, magneto assemble, petrol tank etc. All these items, according to the appellants are components of motorised two and three wheelers manufactured by them. In short, according to the appellants, they maintain separate account for "spares" and "components". The vehicles which are manufactured by the appellants, according to them, fall under entry 75A and since 75A does not cover components, they are liable to pay octroi for components under entry 86.

5. It appears that during January - May 2002 the Corporation sent their team of officials of the octroi department for checking and verification of the records of the appellants. Pursuant to the inspection, the Corporation send the impugned letters demanding Rs.31.98 crores as the octroi allegedly evaded/suppressed by the appellants since April 1989 till March 2001. The dispute between the appellants

and the Corporation is in respect of rate at which the octroi is to be levyed on various items such as components, tyres, tubes etc. To be more precise, the case of the appellants is that the "components" meant for motorised vehicles are neither covered under tariff entry 75-A nor any other specific entry and, therefore, residual entry 86 would apply for all the components imported in the appellants factory till 8th May, 2002.

6. On the other hand the Corporation, in their written statement, have not only denied the case set up by the appellants but have raised several disputed questions of fact. They have specifically denied that the appellants have separate spare parts division and its record is separately maintained and their office regularly use to inspect the same. They have stated that the returns were not checked every month, as alleged by the appellants, and therefore, discrepancies were not noticed until the inspection was carried out. They have further stated that after the inspection was carried out, in the meeting the appellants had accepted the legal position as regards the liability to pay the octroi in accordance with entry 75-C vis-a-vis components. According to the Corporation, after 1st April, 1989 the components and

spares attracted octroi duty at the rate of 2% irrespective of the fact whether components and spares were of the vehicles falling under category 75-C. In short, the octroi on the components and spares were liable to be levied under entry 75-C. They have denied that the components in respect of vehicles being manufactured by the appellants fall under residual entry 86.

7. It is against the backdrop of the aforestated brief factual matrix, Mr.Abhyankar, learned senior counsel for the appellants raised two questions. Firstly, whether the spares and components being imported by the appellants fall under tariff entry 75-A or 75-C or under entry 86 and whether the demand made by the respondents by the impugned letters/orders in the suit is legal and justified. Secondly, whether the demand for differential octroi after a gap of 12 years is barred by law of limitation.

8. Admittedly, the appellants manufacture motorised two and three wheelers and some spare-parts thereof and that they require to import "parts" as "spares and components" thereof. It is against this admitted position I now proceed to examine the

questions raised in the present appeals.

9. Admittedly, the respondent-Corporation, was constituted with effect from 5th October, 1982. Though Section 149 of the Bombay Provisional Municipal Corporation Act, 1949, (for short "the Corporation Act") empower the corporation to frame its rules, in the event it decides to levy Octroi for the matters enumerated therein, it had not framed the rules untill 2002. As a result thereof it continued to follow the Maharashtra Municipalities (Octroi) Rules, (for short "the rules") framed under the Maharashtra Municipalities Act, 1965 (for short "Municipalities Act"). The corporation had granted to the appellants current account facility in respect of payment of Octroi under the Municipalities Act and there is no dispute that the said facility was continued after the constitution of the corporation. Under rule 3 of the rules, a municipal council is entitled to levy octroi on various goods mentioned in Schedule I of the said rules and is entitled to fix rates of octroi not exceeding maximum rate and not less than the minimum rate prescribed in the said schedule for each type of goods. In pursuance of the powers conferred by the rules, the Corporation levied octroi on various items and published a table of rates thereof from time to

time. In the present case, we are concerned with entry no.75 of the table of rates of octroi during the relevant period, that is, April 1989 to March 2001 for which the impugned demand was made. The relevant entries which were in force during the aforesaid period read thus:

I-Entry 75 of Table of Rates of Octroi in force between 01.04.1989 and 31.03.1993 reads this :

Vehicles	Rate
(A) Motor cars Motor cycles, Chassis and lorries and	0.50
spares thereof	2.00
(B) Bicycles and their spares parts	0.50
(C) Perambulators, carriages, all kinds of vehicles and their components and spares	2.00

II-Entry 75-inforce between 01.04.1993 and 31.03.2001 reads thus :-

Vehicles	Rate
(A)1)Motor cars, motor cycles, Chassis & Lorries	0.50
2)Spares thereof	2.00
(B) Bicycles and their components and spare parts	0.50
(C) Perambulators, carriages, all kinds of vehicles and their Components and spares	2.00

III-Entry 86 - in force during the aforesaid period reads thus:

Goods not included in any of the above items and not specifically exempted in Schedule II	1.50

A careful reading of the aforesaid entries, show that 75-A does not cover "components" of the vehicles mentioned therein and it provides for octroi to be levied only on "spares" of the said vehicles at 2.00 percent. Whereas the components are covered by entry 75 C, to be levyed at 2.00 percent. Insofar as revised table of rates, which came into force on 01.04.1993 is concerned, no change was made in entry 75 A and 75 C.

10. Mr.Abhyankar, learned senior counsel for the appellants after inviting my attention to the aforesaid entries strenuously contended that the components and spares imported by the appellants for manufacture of their motorised two and three wheelers fall under entry 75-A and not under entry 75-C. He urged that the motorised vehicles manufactured by the appellants, in any case do not fall under entry 75-C, and they are covered by entry 75-A. He submitted that entry 75-A does not refer to components and, therefore, components would fall under residual entry 86 and are liable to be charged at the rate of 1.50%.

In short, he submitted that in any event the components of the motorised vehicles are not covered under entry 75-C, and therefore, the impugned demand of the difference claimed by the Corporation is illegal. To my specific query, as to how motorised three wheelers would fall under entry 75-A, Mr.Abhyankar had no satisfactory reply. The vehicles fall under entry 75-A are motor cars, motor cycles, chassis and lorries and the spares thereof. It has not been disputed by the appellants that the vehicles which appellants-company manufacture within the limits of the respondent-Corporation are scooters and motorised three wheelers. It is true that the motor cycles and scooters, both are two wheelers but the question is whether scooters would fall under entry 75-A. In other words, whether scooters could be treated as motor cycles for the purpose of levying octroi under entry 75-A. My answer to this question is obviously in negative. I am fortified in that view by the decision of the Division Bench of this Court in **Kinetic Engineering Ltd. and Anr. Vs. State of Maharashtra & Others 2004(3) Mh.L.J.1034**. In that case the Division Bench was considering whether "mopeds" are covered by "motor cycles" as the type of vehicles and can be charged with octroi under entry covering "motor cycles". The observations made by the Division Bench in paragraph 11 read thus:

> "11. We proceed to test the correctness of the submission of the petitioners, that 'Mopeds' would not fall within the entry 'Motorcycles', by analyzing the same. The test ought to be as to how would persons dealing in the trade of vehicles and conversant with the goods would understand a motorcycle vis-avis a 'Moped'. Take example of a hypothetical case - How will a person conversant with the said two vehicles would place his demand for purchase of any of the two vehicles. Will a trader dealing in Motorcycles and Mopeds place his order with the Manufacturer for Mopeds if he wants to purchase Motorcycles? And if he does so, would the manufacturer supply him the vehicle which the trader wants to buy. The answer is obvious, at least in this region, no trader would place an order for Mopeds if he wants to buy Motorcycles and vice versa. If such an order is placed, the Manufacturer would supply him wrong goods. Leave asidea trader, even a consumer will not ask for Motorcycle if he wants to buy a Moped. In common parlance, both the types of vehicle are understood differently. The words 'Motorcycles' and 'Mopeds' are not synonymously used and they refer to different articles. Seen from this angle, it does appear that the Entry 'Motorcycles' cannot be clearly and unambiguously read to include 'Mopeds' and vice versa.

11. In my opinion too, the words "motor cycle" and "scooter" are not synonymous and they refer to different vehicles. Even in common parlance "motor cycles" and "scooters" are known as two different types of vehicles. Scooters would not, therefore, fall under the entry 75 A. Insofar as motorised three vehicles are concerned, by no stretch of imagination, they would fall under entry 75 A. Both these vehicles, in my opinion, fall under entry 75 C which

covers all kinds of vehicles and the components and spares thereof. In our case, though the appellants in the plaint have simply stated that they manufacture motorised two and three wheelers without specifying the exact type and trade name under which they sell their vehicles, before me they have not disputed that they manufacture "scooters" and "motorised three wheelers". They have also not clarified as to how and why their vehicles fall under entry 75-A. It is true, that the parties will have an opportunity to lead evidence in support of their pleadings and claim. However, in any case, even at this stage it is not be possible, to accept the contention of the appellants that their vehicles or the components and spares thereof fall under entry 75-A. Having, reached this conclusion there is no question of going to the residual entry 86, and therefore, demand made by the Corporation for components and spares of the vehicles being imported by the appellants is prima facie legal and justified. In the circumstances the first contention of Mr.Abhyankar fails. The judgment relied upon by Mr.Abhyankar in **Bajaj Tempo Ltd. and Anr. Vs. Pimpri Chinchwad Municipal Corporation 1998 (1) Bom.C.R.745** is of no avail to the appellants since in that case, the vehicle involved was clearly covered by entry 75-C and not by 75-A and, therefore, the components and spares imported by them were covered by

entry 75-C. In view of the peculiar facts and circumstances of that case, in my opinion, this judgment would not help the appellants to urge that the vehicles in our case fall under entry 75 A.

12. That takes me to consider the next question as to whether the demand made by the Corporation of the octroi duty for the period between April, 1989 and March, 2001 is barred by Law of Limitation. It reveals from the written statement filed by the Corporation that they have categorically denied that the appellants have separate spare-parts division and their record is separately maintained and the same is inspected by their officers. They have also denied that the appellants keep separate accounts of the spares and components. They have further denied that they regularly check the returns every month and they did not find any discrepancies or suppression of the octroi duty. As a matter of fact there is a positive assertion in the written statement that the correctness of tariff was never checked and that the returns were checked only from the angle of correctness of quantities of various goods imported within limits of the Corporation by comparing the same with passes issued at the time of import. The appellant while filing its monthly returns, according

to the corporation, used to calculate octroi duty payable by it as per its own interpretation as regards tariff applicable and they took undue advantage of the procedure that was being followed by its officers while levying octroi duty. It appears, when the Corporation during inspection of the record noticed that the proper duty was not shown in the returns pertaining to components and some other items and that there was suppression or evasion of the octroi duty, the impugned demand was made. Mr.Abhyankar, learned senior counsel for the appellants submitted that there is no allegation of evasion or suppression of tax. On the other hand, Mr.Walawalkar, learned senior counsel for the Corporation, submitted that this is clear case of evasion/suppression of tax which was noticed by the officers of the Corporation when they checked and inspected the record and unless the parties are allowed to lead evidence in support of their contentions it would not be proper to grant interim injunction on the ground of limitation raised by the appellants.

13. It is now well settled that the question of limitation is a mixed question of law and fact. The present case indubitably raises several disputed questions of fact and, in my opinion, they cannot be

dealt with at this stage. It is true that the municipal council should make demand of octroi dues with least practicable delay and/or should avoid any inordinate delay. But the question whether the delay was or had not been avoidable would depend on the facts and circumstances of each case. The question of limitation would also raise few other questions, such as whether there is delay and, if "Yes", whether the entire claim is barred by Law of Limitation ? Who was responsible for the delay, Whether the appellants or the Corporation ? and if appellant, whether it is open for them to raise an issue of limitation ? Whether one can claim immunity on the ground of limitation, who has evaded/suppressed the octroi duty or has not filed true and correct returns ?. All these questions cannot be addressed at this stage and will have to be considered and gone into during trial. It may be noticed that though Mr.Abhyankar, learned senior counsel for the appellants invited my attention to the rules 23, 28 and 31 of the rules read with section 142 of the Municipalities Act, none of the learned senior counsel for the parties could pin point any provision either in the Corporation Act or in the Municipalities Act prescribing the limitation for such demand by the Corporation. The question, therefore, may arise as to whether general provisions of the law of limitation would apply. However, no such

submission was advanced by either of the learned senior counsel for the parties. The trial Court, however, may have to consider all such questions during trial and they cannot be considered at this stage.

14. Prima facie I am satisfied that neither the case for interim relief is made out nor the impugned judgment warrants interference by this Court. That apart,there is no dispute that the appellants pay huge octroi duty every month. It is nobody’s case that the appellants are financially weak and are not in a position to deposit the amount of demand. Keeping that in view and considering that if the amount, as demanded by the Corporation, is paid by the appellants and even if they ultimately succeed in the suit it is possible to adjust the said amount towards future dues. In such an eventuality it would be open to the court to direct the Corporation to pay interest on the said amount. In my opinion, the Corporation which has its financial obligations, its source of revenue cannot be obstructed by the interim order restraining them from recovering the taxes irrespective of the fact whether the demand is in respect of past dues. The trial Court was justified in dismissing the applications filed by the appellants. In the circumstances these appeals fail and are dismissed as

such.

. The appellants, however, are allowed to deposit 50% of the total dues of octroi, as demanded by the impugned letters/orders, within a period of six weeks from today and remaining 50% within a period of four weeks therefrom. The trial Court shall endeavour to dispose of the suits as expeditiously as possible and in any event within a period of six months from the date of receipt of this order on merits in accordance with law. The parties are directed to co-operate and shall preclude from seeking adjournments on frivolous grounds. With these observations both the appeals stands disposed of.

(D.B.Bhosale, J.)